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FEDERAL ELECTION COMMISSION

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2011 MAR -1 A 9:08 Washington, DC 20463

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

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FEDERAL ELECTION  
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P-MUR 507

DATE SUBMITTED: 8/25/10

DATE ACTIVATED: 9/13/2010

EXPIRATION OF SOL: 7/2006 – 4/2015

**RESPONDENTS:**

Empire State Regional Council of  
Carpenters  
Empire State Regional Council of  
Carpenters Political Action Fund-  
Federal, and William R. Banfield, in his  
official capacity as treasurer

**RELEVANT STATUTES:**

2 U.S.C. § 432(b)(2)  
2 U.S.C. § 434(b)  
2 U.S.C. § 441b(a) and (b)  
11 C.F.R. § 102.6(a)(1)  
11 C.F.R. § 102.6(b)  
11 C.F.R. § 102.6(c)(1), (2), (4) and (6)  
11 C.F.R. § 102.8(b)  
11 C.F.R. § 110.3(c)(1)

**INTERNAL REPORTS CHECKED:**

Empire State Regional Council of  
Carpenters Political Action Committee-  
Federal Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

Empire State Regional Council of Carpenters ("Empire State") and its separate  
segregated fund, the Empire State Regional Council of Carpenters Political Action Fund-Federal  
("the Federal PAC") have filed a *sua sponte* submission with the Commission concerning  
apparent violations of the Federal Election Campaign Act of 1971, as amended, ("the Act") in  
connection with its handling of SSF funds and the related disclosure reporting requirements,

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1 dating back to 2001. Specifically, it appears that Empire State failed to transfer political  
2 contributions collected from its members to the bank account of its SSF within the 30-day  
3 timeframe mandated by 2 U.S.C. § 432(b)(2). Instead, Empire State maintained these funds for  
4 periods exceeding two years in a separate escrow account whose activity it did not report to the  
5 Commission. The total amount of escrow account deposits during 2001 – 2010 appears to be  
6 \$2,174,348.09, of which \$1,475,468.52 is still within the statute of limitation.

7 Based on the information provided in the *sua sponte* submission and in subsequent  
8 follow-up communications with counsel, this Office recommends that the Commission find  
9 reason to believe that the Empire State Regional Council of Carpenters violated 2 U.S.C.  
10 § 432(b)(2) by failing to adhere to the transmittal requirements applicable to collecting agents;  
11 and that the Empire State Regional Council of Carpenters Political Action Fund-Federal violated  
12 2 U.S.C. § 432(b)(2) and 11 C.F.R. § 102.6(c)(1) by failing to ensure that its collecting agent  
13 adhered to the applicable disclosure and transmittal requirements, and violated 2 U.S.C. § 434(b)  
14 by failing to report funds that were available for federal use in the escrow account as cash-on-  
15 hand.

16 Upon review of the *sua sponte* submission, the Office of General Counsel requested and  
17 received significant additional information from Respondents, including more information  
18 regarding the formation of the Empire State Regional Council of Carpenters and its escrow  
19 account bank records, and related account bank records, from 2001 through 2010. *See* Response  
20 to Memorandum Seeking Additional Information (“Response to Memorandum”) and  
21 accompanying records. Given the thorough information provided by Respondents, as well as  
22 Respondents’ cooperation with the Commission in filing the *sua sponte* submission and

1 responding to further requests for information, OGC recommends that the Commission authorize  
2 OGC to engage in pre-probable cause conciliation with Respondents.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. The Facts**

5 In 2001, the Empire State Regional Council of Carpenters formed from the merger of  
6 three separate New York carpenters' unions. *See* Response to Memorandum at ¶1. At that time,  
7 Empire State also organized its Federal and state PACs. Empire State acted as the collecting  
8 agent for both the Federal PAC and for its state and local (non-federal) PAC, the Empire State  
9 Regional Council of Carpenters Political Action Fund-State ("NYS PAC"). To solicit  
10 contributions from union members, Empire State used a contribution card which stated that "all  
11 contributions may be made to either the Federal PAC or the NYS PAC, or may be divided  
12 among the two PACs in the discretion of the Treasurers of the PACs." *See Sua Sponte*  
13 Submission at p. 1 and Exhibit D. The employers of Empire State members withheld the  
14 members' voluntary PAC contributions together with all other union contributions (such as union  
15 dues) from the union members' paychecks and sent checks in the amount of the withheld  
16 contributions to Empire State's fund office. Employees of Empire State's fund office then  
17 deposited these checks into a general account and transferred the contributions allocated for the  
18 federal and state PACs from the general account to the PAC escrow account. *See* Response to  
19 Memorandum at ¶3. Bank records provided indicate that the transfers from the general fund to  
20 the PAC escrow account occurred within very short periods through automatic sweeps from bank  
21 account to bank account, but we do not have exact details on how long that transfer process took.  
22 Empire State (as the collecting agent) used a single escrow account into which it placed all  
23 contributions to its federal and state PACs. *See* Response to Memorandum at ¶2. The bank

records provided in response to OGC's request for additional information indicate the following amounts deposited into the escrow account<sup>1</sup>:

Year	Bank of America Escrow Account Deposits	FTUB Escrow Account Deposits	Total
2006	\$72,119.52	\$317,303.67	\$389,423.19
2007	\$6,024.94	\$295,714.23	\$301,739.17
2008	\$3,429.71	\$340,050.44	\$343,480.15
2009	\$586.58	\$347,312.23	\$347,898.81
2010	\$0	\$92,927.20	\$92,927.20
Total			\$1,475,468.52

As discussed in more detail below, all of the collected political contributions placed in the escrow account were available to be used as federal funds. Eventually Empire State transferred the political contributions to the Federal PAC or the NYS PAC in response to specific requests by the treasurers of the committees for funds. Neither Empire State nor the Federal PAC reported to the Commission the escrow account balance, deposits or withdrawals. Once Empire State deposited the funds into the Federal PAC account, the Federal PAC reported those transfers to the Commission.

The errors in Empire State's process came to light as a result of advice from Empire State's accountant, Shultheis & Panatierre, that the escrow account for the PACs might be irregular. See Response to Memorandum at ¶6. Empire State then requested an external review by its outside counsel, Cary Kane, which resulted in an April 13, 2010 memo to Empire State

<sup>1</sup> As detailed in the Submission and the Response to Memorandum, Empire State and its SSF changed bank accounts during the time period discussed in this report, due to the consolidation of Empire State with other unions, consolidation in the banking industry, and a wholesale change in Empire State's banking relationship from Bank of America to First Trade Union Bank. As a result, at the end of June 2006 Empire State ceased deposits of contributions into the escrow account at Bank of America and began depositing all contributions into an FTUB escrow account (with linked checking account, which received deposits and then swept those deposits automatically into the escrow account). The Bank of America account continued to accrue interest from 2006 through 2009, when Empire State closed the account and transferred its remaining balance of \$219,000 to the FTUB escrow account on July 10, 2009.

1 leadership outlining errors in the transmittal and reporting process. *See Sua Sponte* Submission  
2 Exhibit I. Union leadership undertook an investigation as the United Brotherhood of Carpenters  
3 and Joiners of America, ("UBC") a larger union with which Empire State is affiliated, prepared  
4 to place Empire State under its supervision for administrative failures beginning on April 26,  
5 2010. *See Sua Sponte* Submission at p. 3. UBC's counsel then initiated the *sua sponte*  
6 submission on behalf of Empire State and the Federal PAC, which was received on August 25,  
7 2010. During the change in leadership of the union and the PAC, the Federal PAC failed to  
8 timely file its July 2010 Quarterly Report, which was addressed by the Administrative Fines  
9 program in AF-2164. The Federal PAC filed an Amended July 2010 Quarterly Report on  
10 December 2, 2010, noting numerous corrections to the original late-filed report.

11 The *sua sponte* submission states that when Empire State became aware of the transfer  
12 violations, it stopped depositing contributions into the escrow account, and that it has begun  
13 depositing all ongoing political contributions collected from its members into the Federal PAC  
14 account to ensure compliance with the thirty-day transmittal period under 2 U.S.C.  
15 § 432(b)(2)(A) and 11 C.F.R. § 102.8(b). The bank records provided in response to OGC's  
16 request for additional information support this representation. Empire State has also prepared  
17 and is using a new contribution card which states that all contributions will be made to the  
18 Federal PAC. *See* Exhibit J to the Submission. After receipt of the political contributions, the  
19 Federal PAC can, at its discretion, transfer unlimited funds to the NYS PAC under  
20 11 C.F.R. § 102.6(a)(1)(i). Further, as part of its *sua sponte* submission, Empire State requests  
21 the Commission's approval of its plan to transfer the remaining funds in the escrow account,  
22

(\$524,329.98 as of October 29, 2010), to the NYS PAC account and close the escrow account.

**B. Legal Analysis**

The Act prohibits labor organizations from making direct contributions in connection with federal elections. 2 U.S.C. § 441b(a). However, labor organizations may establish and administer separate segregated funds for political purposes, solicit contributions to those funds from members and their families, and collect funds on behalf of their SSFs as "collecting agents." 2 U.S.C. §§ 441b(b)(2)(C) and (4)(A)(ii); and 11 C.F.R. § 102.6(b).

Pursuant to 11 C.F.R. § 102.6(b)(1), "[a] collecting agent is an organization or committee that collects and transmits contributions to one or more separate segregated funds to which the collecting agent is related." Collecting agents may transfer unlimited funds "to a separate segregated fund made pursuant to 11 C.F.R. § 102.6." 11 C.F.R. § 110.3(c)(1). Collecting agents that are not otherwise organizations required to register with the Commission as political committees, and that fulfill the requirements of 11 C.F.R. § 102.6(c), are not required to register and report as political committees so long as the collecting agent does not engage in actions such as making contributions or expenditures. 11 C.F.R. § 102.6(b)(2). However, separate segregated funds that receive contributions collected by collecting agents must report those contributions to the extent required by 2 U.S.C. § 104.3(a). 11 C.F.R. § 102.6(c)(7).

Every person, including a collecting agent, who receives a contribution of \$50 or less for a political committee which is not an authorized committee shall forward such contribution to the treasurer of the committee within 30 days of receipt. 2 U.S.C. § 432(b)(2)(A), 11 C.F.R.

1 § 102.8(b)(1) and 11 C.F.R. § 102.6(c)(4). A union, as the collecting agent for its SSF, may  
2 receive from members' employers a combined payment including "voluntary contributions to the  
3 union's separate segregated fund and union dues or other employee deductions." 11 C.F.R.  
4 § 102.6(c)(3). Upon receiving such combined payments, the union must segregate the SSF  
5 contributions from the other union funds. To accomplish segregating the contributions, the  
6 union, as its SSF's collecting agent, must either set up 1) "a transmittal account to be used solely  
7 for the deposit and transmittal of funds collected on behalf of the separate segregated fund," all  
8 of which such funds are subject to the Act's prohibitions and limitations; 2) deposit such  
9 contributions into the agent's treasury account, keeping separate records, or 3) deposit them into  
10 an account used otherwise only "for State and local election activity," again keeping separate  
11 records of the contributions received for the SSF. 11 C.F.R. § 102.6(c)(4)(ii).

12 The collecting agent must "retain all records of contribution deposits and transmittals . . .  
13 for a period of three years . . . ." 11 C.F.R. § 102.6(c)(6). The separate segregated fund for  
14 which the collecting agent is collecting funds is responsible for "ensuring that the recordkeeping,  
15 reporting, and transmittal requirements" of the regulations are met by the collecting agent. 11  
16 C.F.R. § 102.6(c)(1). The Act requires that committees (other than authorized committees of  
17 candidates) report, for the reporting period and calendar year, the total amount of all receipts, *see*  
18 2 U.S.C. § 434(b)(2), the total amount of all disbursements, *see* 2 U.S.C. § 434(b)(4); and the  
19 total amount of all transfers to affiliated committees, *see* 2 U.S.C. § 434(b)(4)(C).

#### 20 1. Timing of Transfers

21 Empire State, as a labor organization, could properly serve as a collecting agent for its  
22 own connected SSF, and the voluntary contributions collected by Empire State were permissible  
23 contributions under the Act. 2 U.S.C. §§ 441b(b)(2)(C) and (4)(A)(ii); and 11 C.F.R.

1 § 102.6(b). However, the timing of the ongoing transfers from the escrow account to the Federal  
2 PAC violates the Act. As outlined above, 2 U.S.C. § 432(b)(2) requires any recipient to forward  
3 contributions under \$50 no later than 30 days after receipt, and 11 C.F.R. § 102.6(c)(4) confirms  
4 that this timeframe applies to collecting agents.<sup>3</sup> According to the *sua sponte* submission,  
5 Empire State did not transfer any of the amounts collected in the escrow account to the Federal  
6 PAC within 30 days of receipt. *See Sua Sponte Submission* at p. 2. The bank records provided,  
7 when compared with the Federal PAC's disclosure reports filed with the Commission, indicate  
8 that from the date that Empire State deposited contributions into the escrow account, more than  
9 two years passed before the Federal PAC reported receiving transfer of any of those  
10 contributions.<sup>4</sup> The Office of the General Counsel, therefore, recommends that the Commission  
11 find reason to believe that the Empire State Regional Council of Carpenters violated 2 U.S.C.  
12 § 432(b)(2) and 11 C.F.R. §§ 102.6(c)(4) and 102.8(b) by failing to transmit funds from its  
13 escrow account within the thirty-day period established by the statute and regulations.

<sup>3</sup> The information available indicates that the small individual contributions from Empire State members did not include individual contributions of more than \$50, or contributions from any individual contributor aggregating more than \$200, and therefore it appears that the contributions at issue in this matter did not result in violations of the disclosure and record-keeping requirements of 2 U.S.C. §§ 432(b)(2)(B) and 432(c) or the itemization requirements of 2 U.S.C. § 434(b)(3)(A). The provided solicitation card suggested a contribution to the PACs of \$0.04 per hour worked, which would yield a contribution of \$3.20 per full-time 80-hour bi-weekly pay period, or a total annual contribution of \$83.20 per full-time worker. Contributors could elect to give more or less than the suggested contribution, but Empire State has represented through counsel that it did not collect any individual contributions exceeding \$50, nor did it collect any aggregate annual contributions from an individual exceeding \$200 during the period in question. *See Response to Memorandum* at ¶4. Empire State has not provided records in sufficient detail to test this assertion, and it does not appear to have such records, as it received contributions aggregated by employer. Given the likely scope of investigation that would be required to determine whether any individual contributions did, in fact, exceed these thresholds, and the scope and magnitude of the other violations present in this matter, we do not recommend that the Commission pursue an investigation into this issue.

<sup>4</sup>For example, though the escrow account accumulated \$389,423.19 in new contributions during 2006, and \$301,739.17 in new contributions in 2007, none of that money was transferred to the Federal PAC's account during 2006 or 2007, as reflected in the Federal PAC's bank statements and its FEC disclosure reports. Not until the July 2008 Quarterly Report did the Federal PAC report receipt of funds, disclosing receipt of \$10,000 in un-itemized contributions in that quarter. The Federal PAC reported receiving \$15,000 in un-itemized receipts on its 2009 Mid-Year Report, and an additional \$100,000 in un-itemized receipts on its 2009 Year-End Report.



As noted above, pursuant to 11 C.F.R. § 102.6(c)(1), separate segregated funds are responsible for ensuring that their collecting agents comply with the recordkeeping, reporting and transmittal requirements of 11 C.F.R. § 102.6. The Federal PAC did not ensure that Empire State properly forwarded contributions within the required timeframes. *See Sua Sponte* Submission at p. 2. Therefore, this Office recommends that the Commission find reason to believe that the Empire State Regional Council of Carpenters PAC-Federal and its treasurer, William R. Banfield, acting in his official capacity, violated 2 U.S.C. § 432(b) and 11 C.F.R. § 102.6(c)(1) by failing to ensure that its collecting agent, Empire State Regional Council of Carpenters, complied with the Act's transmittal requirements with regard to the funds transferred from the escrow account to the Federal PAC. *See* MUR 5229 (SEIU Local 1199) (the Commission found reason to believe against both the collecting agent and the SSF where the union, acting as the collecting agent, failed to timely transfer funds, and the SSF failed to ensure that the collecting agent complied with the law.)

## 2. Reporting Violations

Empire State's failure to comply with the 30-day transmittal requirements of 2 U.S.C. § 432(b)(2) and 11 C.F.R. § 102.8(b), as required by 11 C.F.R. § 102.6(c)(4), caused the Federal PAC to under-report its cash-on-hand in violation of 2 U.S.C. § 434(b) from 2001 until the present. Because Empire State made all of the funds collected in the escrow account available for federal use but these amounts were not properly reported to the Commission as cash-on-hand, the funds were thus undetectable by the public. The cumulative failures to report cash-on-hand total \$6,400,000 over 16 reporting periods, or \$1,475,468.52 in unique un-reported funds.

Although Empire State also made the funds in the escrow account available for state and local use, and eventually transferred some of the funds to the NYS PAC, it failed to differentiate

1 the funds in the account by intended use. It could have differentiated the funds by either 1)  
2 treating all of the receipts as reportable federal receipts and then transferring money as needed to  
3 the non-federal account by using the unlimited transfer rule of 11 C.F.R. § 102.6(a)(1)(i) (as was  
4 approved in Advisory Opinion 1981-59 (Nat. Assoc. of Realtors)); or 2) specifically soliciting  
5 contributions to the non-federal account as such (or at least having the donor designate a specific  
6 share of his or her contribution as non-federal) and depositing those funds upon receipt in the  
7 non-federal NYS PAC account, at which point they would be unavailable for federal use, even  
8 though otherwise within the Act's limitations or prohibitions. Because Empire State failed to  
9 differentiate the funds in the escrow account, it should have reported, as part of its cash-on-hand,  
10 all funds in the escrow account at the end of each relevant reporting period because the entire  
11 contents of the account were available for federal use. Empire State has represented that, as part  
12 of its remedial measures in this matter, it has adopted the first course above as its method for  
13 differentiating funds going forward. It deposits all contributions to its PACs into the Federal  
14 PAC account, reports all receipts to the Commission, and then disburses funds as needed to the  
15 NYS PAC under the unlimited transfer rule of 11 C.F.R. § 102.6(a)(1)(i), and reports those  
16 disbursements to the Commission.

17 The information available therefore supports a finding of a reason to believe that the  
18 Federal PAC violated 2 U.S.C. § 434(b) by failing to report funds available for federal use in the  
19 escrow account as cash-on-hand during the periods covered by the 2006 April Quarterly Report  
20 through the 2010 April Quarterly Report.

P-MUR 507 (Empire State Carpenters PAC)  
First General Counsel's Report

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First General Counsel's Report**

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First General Counsel's Report

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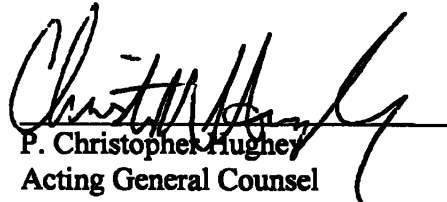
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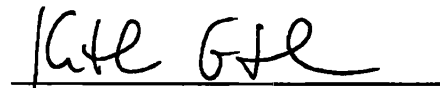
**IV. RECOMMENDATIONS**

1. Open a MUR.
2. Find reason to believe that the Empire State Regional Council of Carpenters violated 2 U.S.C. § 432(b)(2).
3. Find reason to believe that Empire State Regional Council of Carpenters PAC-Federal and William R. Banfield, in his official capacity as treasurer, violated 2 U.S.C. § 432(b)(2) and 11 C.F.R. § 102.6(c)(1).
4. Find reason to believe that Empire State Regional Council of Carpenters PAC-Federal, and William R. Banfield, in his official capacity as treasurer, violated 2 U.S.C. § 434(b).
5. \_\_\_\_\_
6. \_\_\_\_\_
7. Approve the attached Factual and Legal Analysis.
8. Approve the appropriate letters.

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Date

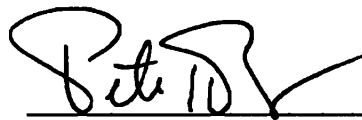
  
P. Christopher Hughey  
Acting General Counsel

  
Kathleen Guith  
Acting Associate General Counsel

P-MUR 507 (Empire State Carpenters PAC)  
First General Counsel's Report

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Peter G. Blumberg  
Assistant General Counsel



Audra Hale-Maddox  
Attorney